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Addressing Future Legal Impacts on the Operational Factor of Space

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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18 May 2004

Abstract

The physical space encompassed by “land, sea and airspace, including outer space, with all their features...influence employment and effectiveness of land, sea and air forces.”¹ This “use of physical space” can be “influenced by legal, political, or ethnic conditions.”² Recent operations in Afghanistan and Iraq have highlighted the influence that legal conditions have on the operational factor of space, increasingly restricting the freedom of action of the operational commander. This influence manifests itself on the theater strategic level in the need for the operational commander to factor in approval by various States for basing, access, overflight and transshipment of personnel, or equipment and other logistics, in order to conduct operations.

The question facing current leaders is what if anything can be done now to address the legal influences on the operational factor of space in the future so as to decrease the restrictions that these influences may place on future operations.

¹ Milan N. Vego, Operational Warfare (Newport, RI: Naval War College, 2002), 33.

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² Ibid.

Those who do not know the conditions of mountains and forests, hazardous defiles, marshes and swamps, cannot conduct the march of an army.

*Sun Tzu*³

INTRODUCTION

The physical space encompassed by “land, sea and airspace, including outer space, with all their features...influence employment and effectiveness of land, sea and air forces.”⁴ This “use of physical space” can be “influenced by legal, political, or ethnic conditions.”⁵ Recent operations in Afghanistan and Iraq have highlighted the influence that legal conditions have on the operational factor of space, increasingly restricting the freedom of action of the operational commander. This influence manifests itself on the theater strategic level in the need for the operational commander to factor in approval by various States for basing, access, overflight and transshipment of personnel, or equipment and other logistics, in order to conduct operations.

The question facing current leaders is what if anything can be done now to address the legal influences on the operational factor of space in the future so as to decrease the restrictions that these influences may place on future operations. The President and the Secretary of Defense have “directed a re-examination of U.S. forward deployments,”⁶ the

³ Sun Tzu, quoted in Milan N. Vego, Operational Warfare (Newport, RI: Naval War College, 2002), 33.

⁴ Milan N. Vego, Operational Warfare (Newport, RI: Naval War College, 2002), 33.

⁵ Ibid.

⁶ “Feith Speech on Stationing U.S. Forces Overseas.” InsideDefense.com, 3 December 2004. <http://www.insidedefense.com/secure/defense_docnum.asp?f=defense_2002.ask&docnum=PENTAGON-20-8-5> [26 April 2004].

purpose of which is to provide a “comprehensive review of the nation’s global defense posture.”⁷

While no decisions have been made at this time, there appears to be a great deal of support for a movement from existing agreements and arrangements⁸ toward a new system of agreements and arrangements that will “better” position U.S. forces to respond to future threats. This support appears to be premised on the belief that our existing agreements and arrangements failed the United States in connection with both Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), and on the assumption that we can anticipate future requirements and obtain acceptable new agreements and arrangements in the current global environment.

The problem is these presuppositions are not correct. First, to a great degree existing agreements and arrangements functioned well to facilitate our operations in both Afghanistan and Iraq. Second, certain needed agreements and arrangements will not be attainable unless there is a global environment that will provide the United States and targeted countries with a common interest sufficient to support the negotiation of new agreements and arrangements. Much like coalition actions themselves⁹, some needed agreements and arrangements will be

⁷ Ibid.

⁸ For the purposes of this paper, the term “agreements” is meant to refer to binding international agreements that meet the criteria of enclosure 2.1.1., of DODD 5530.3, 11 June 1987; whereas the term “arrangements” is meant to refer to any other basis by which the U.S. has obtained an ability to base forces, gain access to another State’s territory, or attain overflight or transshipment rights. U.S. Department of Defense. International Agreements. DOD Directive 5503.3. Washington, DC: 11 June 1987, 21; U.S. Chairman of the Joint Chiefs of Staff. International Agreements. CJCSI 2300.01A. Washington, DC: 12 February 1999, 2. While qualitative differences exist between the two, none will be discussed within the context of this paper.

⁹ U.S. Joint Chiefs of Staff. Joint Doctrine for Joint Operations. Joint Pub 3-0. Washington, DC: 10 September 2001, VI-1.

possible only on an ad hoc basis once a threat has arisen. Finally, even in those situations where new agreements and arrangements may be attainable, there is reason to believe that acceptable provisions will be unattainable.

This is not to advocate that nothing be done. In fact, much may be done at the theater strategic level, as well as on a national strategic level, that will greatly facilitate future operations and our ability to address the restrictions presented by the legal impacts on the operational factor of space.

In order to examine this problem, I will first briefly outline the “legal influences” themselves. Second, I will review our current agreements and arrangements for basing, access, overflight and transshipment of personnel, or equipment and other logistics, the history behind their existence, their effectiveness in support of recent operations and their likely usefulness in connection with future operations. Third, I will discuss the ad hoc agreements and arrangements that were used in connection with recent operations. Fourth, I will discuss what we can expect of any future agreements and arrangements, including both in regard to cost, the establishment of adverse precedent, our actual ability to operate freely and the well-being of our military personnel. Fifth, I will outline current approaches being discussed, focusing on the approach currently being discussed within the European Command (EUCOM). Finally, in conclusion I will discuss the merits and demerits of EUCOM’s approach, its consistency with the guidance being developed within the Office of the Secretary of Defense (OSD) and its applicability to other Combatant Commander’s areas of responsibility (AOR).

LEGAL INFLUENCES

In the context of modern operations, there exist a number of legal influences on space that must be taken into consideration in the planning of any operations. The most important of these can be discussed in the context of basing, access, overflight and transshipment of personnel, or equipment and other logistics.¹⁰

A fifth area where there is a legal impact on the operational factor of space exists in the area of spectrum, where current operations are not merely “legally” impaired, but in a real sense are physically impaired as a result of the loss of communications capability. This impairment of operations extends out into areas where we normally see ourselves as unrestricted, such as in those areas where we operate consistent with our rights to high seas freedom of navigation. However, due to the unique technical aspects of any discussion involving spectrum and the complexity of the existing agreements and arrangements that apply, this area will not be further discussed in this paper.

Often the discussion of basing is combined with that of access. However, for the purpose of this paper it is important to break out the two. Basing represents agreements or arrangements that provide for the long term placement of U.S. personnel, often including such things as dependents, and/or permanent facilities on another State’s territory. The best examples of this are existing U.S. facilities in Germany. Such basing agreements often, if

¹⁰ When formal, these agreements often overlap and can contain a myriad of provisions dealing with the status of U.S. forces in the host nation. Often these agreements are lumped under the title of Status of Forces Agreements (SOFA), though that is a misnomer given the primary purpose of the agreement. However, the SOFA provisions of these agreements are often critical, though the lack of SOFA protection is unlikely to stop an operation if the objective is important enough. A. P. V. Rogers, Visiting Forces in an Operational Context, in The Handbook of the Law of Visiting Forces. Oxford:Oxford University Press, 2002, ed by Dieter Fleck, 533-554; U.S. Department of the Air Force Air Force Operations and the Law, Washington, DC 2002, 11-12 and 53-64.

not always, involve some ceding of sovereignty by both the United States and the host nation. Basing agreements are important to the United States because they provide the United States with the ability to establish complex infrastructures closer to anticipated areas of operations.

Access, or use, agreements or arrangements, differ from basing agreements or arrangements, in that they are not normally intended to incur any long term U.S. presence within another State's territory. These agreements or arrangements can be extensive in the sense of providing for the temporary placement of large numbers of U.S. troops within a country in connection with an operation or exercise, or as minimal as providing for a ship visit or the landing of an aircraft.

Overflight agreements or arrangements provide for the overflight of another State's national airspace. This involves not just the overflight of land, but also the overflight of national waters.¹¹ Overflight is critical to the both the movement and maneuver of U.S. land and air forces, including naval air forces, unmanned aircraft and tactical weapons systems. While blanket overflight rights may be given by a "host" Nation, often overflight rights will be contingent on the nature of the mission or type of the aircraft. The provision of overflight and transshipment rights, often coupled with landing (access) rights, has often been cited as a key contribution of many States in the war against terrorism.¹²

An often overlooked legal influence on space involves the transshipment of personnel, equipment and other logistics. While this problem was highlighted during the

¹¹ Air Force Operations and the Law, 11-13

¹² U.S. Department of State. Diplomatic Support for Operation Enduring Freedom. Washington, DC: 14 June 2002. <<http://www.state.gov/coalition/cr/fs/12753.htm>> [6 May 2004], 1 and U.S. Department of State. International Contributions to the War Against

buildup to OIF with the denial of transshipment rights to the 4th ID by Turkey, this often concerns less visible, but no less important impacts on an operation's critical lines of communications and the movement of bulk logistics such as petroleum and water. Transshipment authorization is sometimes limited to certain types of "non-combat" cargo such as food, water or petroleum. Transshipment authorization can also be significant in the movement of U.S. forces out of existing overseas bases. This highlights that most existing agreements or arrangements are a system within a system of agreements or arrangements.¹³ Finally, it is possible that the denial of transshipment could interfere with maneuver.

CURRENT AGREEMENTS AND ARRANGEMENTS FOR BASING, ACCESS, OVERFLIGHT AND TRANSSHIPMENT

The current system of international agreements and arrangements pertaining to basing, access, overflight and transshipment of materials is to a great degree a holdover from World War II and the Cold War.¹⁴ These Cold War agreements and arrangements were established with countries that "shared a relatively common view about the dangers posed by Soviet adventurism."¹⁵ The cornerstone to these agreements and arrangements are the

Terrorism. Washington, DC: 14 June 2002. <<http://www.state.gov/coalition/cr/fs/12805.htm>> [6 May 2004], 1-15.

¹³ In his review of Richard Kugler's book Changes Ahead: Future Directions for the U.S. Overseas Military Presence, Major Howard Jones insightfully states that military forces operate in a "system of systems" and that this is an important factor that needs to be taken into consideration when "formulating an equitable scheme for future American presence overseas." Howard G. Jones, "Changes Ahead: Future Directions for the U.S. Overseas Military Presence." Air Power History, 46: Winter 1999. ProQuest (8 April 2004), 2, citing Richard L. Kugler, Changes Ahead: Future Directions for the U.S. Overseas Military Presence, Santa Monica, CA: RAND, 1998.

¹⁴ Kurt M. Campbell and Celeste Johnson Ward, "New Battle Stations." Foreign Affairs, 82: September/October 2003. ProQuest (8 April 2004), 5.

¹⁵ Ibid.

agreements concerning bases or facilities located overseas, of which there are at least 702.¹⁶ The most significant of these bases are located on the European continent, and in Japan and in Korea, providing the United States with significant infrastructure that has been built up over the last fifty plus years.

Important to these bases are the secondary agreements and arrangements that the United States has with other countries, especially within NATO, to ensure that the bases that were established following World War II and during the Cold War and the forces located there could be supported. This ensured the unimpeded flow of personnel, equipment and other logistics, thereby countering the threat of the Soviet Union. These agreements and arrangements demonstrate the systems within systems nature of our international agreements and arrangements overseas. The only significant exception to this cold war system is the system of agreements and arrangements that were established in connection with the first Gulf War¹⁷ and even then there are relatively few permanent U.S. facilities in the Middle East.¹⁸ Also, U.S. forces, aside from those currently deployed in Iraq and Afghanistan, remain today concentrated largely in the bases established following World War II and during the Cold War.¹⁹

However, these systems highlight one of the seminal truths about the willingness of other States to enter into agreements and arrangements of this kind with the United States. Other States do not do so out of any feeling of altruism, but rather as a result of their belief

¹⁶ U.S. Department of Defense. Base Structure Report: Fiscal Year 2003 Baseline. Washington, DC: 2003, 16.

¹⁷ Due to the classification of the Gulf War I agreements specific provisions cannot be discussed in this paper.

¹⁸ C.T. Sandars, America's Overseas Garrisons: the Leasehold Empire, Oxford: Oxford University Press, 2000, 315.

¹⁹ "Feith Speech on Stationing U.S. Forces Overseas," 2.

that “it is in their interests.”²⁰ In the case of the NATO countries, Korea and Japan this manifests itself in the security assurances that have been entered into between these countries and the United States. In the Gulf States, this manifests itself in the security provided by U.S. presence. Another more modern interest is also at play with those countries that currently have U.S. bases located in their territory. U.S. bases in their territory provide States with “two-way links” between the “policies and interests” of the and the host Nation.²¹

The question then remains how these existing basing agreements, and the secondary agreements and arrangements, served United States operational needs during OEF and OIF. While much is made of the failed efforts by United States to obtain Turkish permission to transship the 4th ID across Turkey and into Northern Iraq and the resulting changes this failure forced upon the operational plan, the fact remains that the vast majority of U.S. forces that were located in Europe, especially in Germany, Japan and Korea, that were deployed to either Afghanistan or Iraq did so without any significant delays, either on the part of the host Nation or on the part of any intermediate State with whom the United States had an existing agreement or arrangement.²² In other words, the system within the system of the U.S. presence overseas continued to function and the United States was able to continue to enjoy the benefits of the already existing infrastructure. In fact, other than the situation involving the Turks in the case of OIF, there appears to be no situation where the operational plan

²⁰ James R. Blaker, *United States Overseas Basing: An Anatomy of the Dilemma*. New York: Praeger, 1990, 143.

²¹ Ibid: Richard L. Kugler, *Changes Ahead: Future Directions for the U.S. Overseas Military Presence*, Santa Monica, CA: RAND, 1998, 44-46.

²² In fact, the German Prime Minister made it clear early that the U.S. would have “unrestricted” use of its bases in Germany. “Europe, Can the Circle be Squared?; Germany and Iraq.” *The Economist*, January 18, 2003. ProQuest (12 May 2004), 1; Frank Bruni, “Turkey May Reconsider Its Role in Iraq Invasion.” *New York Times*, March 18, 2003, A16.

during either OEF or OIF was adversely affected by the operation of the exiting system of agreements and arrangements pertaining to basing, access, overflight and transshipment of personnel, or equipment and other logistics. To some degree this functionality might be attributed to the mature nature of the existing set of agreements and arrangements, and to the perception by the host Nations that a continued U.S. presence in their territory was in their interest over the long term and that they did not want to put this interest at risk by denying the United States use of these agreements and arrangements. It does need to be remembered that any U.S. operations out of existing bases are subject to a host Nation's exercise of its sovereign right in regard to the use of the base, other access, overflight and transshipment²³ and that these operations could be interfered with if the host or intermediate State chose to do so.²⁴

This system functioned in the case of OIF in the face of considerable political opposition on the European continent. As a result there is reason to believe that the United States will be able to operate from these facilities in the future, especially if the host Nations see a common interest or if there is some degree of international support. Also it is likely that the United States will be required to operate from these facilities in order to accomplish its operational objective. In war games conducted in 1997 and 1998, a critical element of operational success regardless of the actual site of operations in the world was the use of Europe as a staging base and the realization that force could not simply be projected from the United States²⁵ If there is a dismantlement of some of the existing agreements and

²³ Sanders, 322-323.

²⁴ Sanders, 320.

²⁵ Robert H. Scales, Jr., Europe as a Strategic Staging Base for the 21st Century Stabilization Operations, in The Future of the American Military Presence in Europe, ed. Lloyd J. Matthews. Strategic Studies Institute, May 2000, 53-58.

arrangements, without care being given to how they function within the existing systems, and without considering the importance that some existing agreements and arrangements serve as links between the policy and interests of the United States and current host Nations, the operational commander may end up being denied an effective system in future operations.²⁶

RECENT AD HOC AGREEMENTS AND ARRANGEMENTS THAT WERE NEEDED IN CONNECTION WITH RECENT OPERATIONS

OEF more than any operation in the last thirty years demonstrated how the operational plan could be complicated by a lack of existing agreements or arrangements pertaining to basing, access, overflight and transshipment of personnel, or equipment and other logistics. Arguably a similar problem faced the United States in the lead up to the first Gulf War. However, in that case those countries in the Gulf region that ended up providing the United States with basing, access, overflight and transshipment of personnel, or equipment and other logistics were faced with a direct threat to their security. The one exception to this statement was Turkey and it can be argued that Turkey learned from its experience during the first Gulf War and that this lesson resulted at least in part to the inability of the United States to gain transshipment authorization for the 4th ID.

In the case of OEF the United States was faced with a landlocked country bordered by States with whom the United States had few existing agreements and arrangements. As a result, during the lead up to OEF the United States was required to approach these States to attain these agreements and arrangements, resulting in a great deal of effort on the part of the

²⁶ Klaus Naumann, Staying in Europe: a Vital American Interest, in The Future of the American Military Presence in Europe, ed. Lloyd J. Matthews. Strategic Studies Institute, May 2000, 48-51; Campbell, 4-5.

respective embassies, the staff of the Combatant Commander and negotiators originating from Washington, DC.²⁷ This lack of existing agreements and arrangements resulted in a great deal of uncertainty in the operational plan as it was being developed and many of the agreements and arrangements were concluded as the operation progressed. Finally, the lack of existing infrastructure in the immediate area of the operation likely increased the cost and difficulty of the operation and the flexibility of the operational commander. An example of this increased difficulty can be seen in the early dependence on carrier air while access for air operations was being sought with the bordering States.²⁸

FUTURE AGREEMENTS AND ARRANGEMENTS

With the end of the threat presented by the Soviet Union, U.S. basing and deployments overseas have experienced increasing political and social conflicts with host Nations.²⁹ While these conflicts are far greater outside Europe³⁰, they have resulted in demands to change existing agreements worldwide in regard to such matters as criminal jurisdiction³¹ and protection of the environment, with significant changes to existing

²⁷ U.S. Department of State. Diplomatic Support for Operation Enduring Freedom. Washington, DC: 14 June 2002. <<http://www.state.gov/coalition/cr/fs/12753.htm>> [6 May 2004]; U.S. Department of State. International Contributions to the War Against Terrorism. Washington, DC: 14 June 2002. <<http://www.state.gov/coalition/cr/fs/12805.htm>> [6 May 2004].

²⁸ However, even in the context of OEF the value of existing agreements and arrangements and the mature infrastructure that comes with them can be seen through U.S. operations out of Diego Garcia, Europe and the Middle East.

²⁹ Sandars, 322-325.

³⁰ Sandars, 323.

³¹ This concern is further complicated by the entry into force of the International Criminal Court

agreements resulting in Germany, Korea, Spain and Greece.³² In some cases, most notably in the Philippines and Panama, the result has been an end to U.S. basing. Any negotiations of revisions to old agreements or arrangements, or the negotiation of new ones, will likely entail significant time, with negotiations stretching over years³³, and result in provisions less favorable to the United States than those present in existing agreements or arrangements.³⁴

In fact, while the United States has been successful in its efforts to retain key bases³⁵, the United States has for some time been on an aggressive program of closing and consolidating overseas bases. In Europe alone the United States has closed 922 installations from 1990 to 2003, comprising about seventy percent of its total number of installations in the area³⁶ and there has been an overall decrease in installations overseas of roughly sixty percent of the total number in existence in 1990.³⁷ As a result, the U.S. presence in Europe, and the infrastructure and capabilities that came with it, have already been significantly decreased.

³²Paul J. Conderman, Jurisdiction, in The Handbook of the Law of Visiting Forces. Oxford: Oxford University Press, 2002, ed by Dieter Fleck, 133-8; Donald A. Timm, Visiting Forces in Korea, in The Handbook of the Law of Visiting Forces. Oxford: Oxford University Press, 2002, ed by Dieter Fleck, 457-463.

³³Campbell, 4.

³⁴Richard J. Erickson, "The Making of Executive Agreements by the United States Department of Defense: An Agenda for Progress." Boston University International Law Journal, 13: 1995, 103. Blaker, 166-167.

³⁵Sandars, 327.

³⁶Strategic Theater Transformation Concept. Unpublished briefing, European Command, 2004, 20.

CURRENT APPROACHES UNDER DISCUSSION

The future footprint of U.S. forces overseas is currently being discussed at the national strategic level, as embodied by current discussions within the OSD, and at the theater strategic level, as embodied by the current proposal being put forward by Commander, EUCOM.

As stated by the Undersecretary of Defense for Policy, the current review of the military presence overseas is part of the Department's efforts in regard to transformation.³⁸ While no proposals have yet been put forward, there appears to be a common thread to the national strategic discussion:

1. The current international agreements and arrangements were concluded in a different strategic environment;
2. That the current system of agreements and arrangements are not flexible enough to meet the current security needs of the United States;
3. The location of current bases are not in line with likely future areas of operation; and
4. That current agreements and arrangements unduly restrict U.S. operational requirements.³⁹

³⁷ U.S. Department of Defense. Report Required by Section 2914 of the Defense Base Closure and Realignment Act of 1999, as Amended Through the National Defense Authorization Act for Fiscal Year 2003. Washington, DC: March 2004, 38.

³⁸ "Feith Speech on Stationing U.S. Forces Overseas."

³⁹ "Feith Speech on Stationing U.S. Forces Overseas"; Feiler, Jeremy, "DOD Official: Overseas Realignment Will Affect 2005 BRAC Decisions." InsideDefense.com, 19 February 2004. http://www.insidedefense.com/secure/defense_docnum.asp?f=defense_2002.ask&docnum=dplus2003_3435 [7 May 2004], 1; Feiler, Jeremy, "DOD Strategy Official Urges Repositioning of U.S. Forces Worldwide." InsideDefense.com, 4 December 2003. <http://www.insidedefense.com/secure/defense_docnum.asp?f=defense_2002.ask&docnum=PENTAGON-19-49-10> [7 May 2004], 1-2; Plummer, Anne

The Commander, EUCOM has put forward a more detailed theater strategic plan, the key points of which are:

1. Joint Main Operating Bases (JMOB) which would provide strategically enduring assets in friendly territory and which are capable of providing sustained command and control, administration, and logistical support. An example of a possible JMOB would be Ramstein Air Base, Germany;
2. Joint forward Operating Bases (JFOB) which would provide scalable, semi-permanent facilities to support tactical operations, capable of extended use and storage of prepositioned equipment. An example of a possible JFOB would be Camp McGovern, Bosnia. JFOBs would be supported by the JMOBs;
3. Joint Forward Operating Locations (JFOL) which would be an expeditionary facility similar to a JFOB, including possible storage of prepositioned equipment, but with limited in place infrastructure. An example of a possible JFOL would be GAO, Mali. JFOLs would also be supported by JMOBs and would be expandable to a JFOB; and
4. Joint Prepositioned Sites (JPS) which would contain prepositioned material.

and Emily Hsu, "DOD to Transform Global Military Posture of U.S. Troops Abroad", 1-2; Freedom of Action: Policy Guidance on International Agreements Relevant to Global Posture. Unpublished Working Paper, Office of Deputy Assistant Secretary of Defense (Strategy), 26 February 2004. InsideDefense.com, 8 December 2003. <http://www.insidedefense.com/secure/defense_docnum.asp?f=defense_2002.ask&docnum=ARMY-15-49-9> [26 April 2004], 2-9.

5. This network of facilities would enhance operational flexibility, readiness and support to other operational commanders, while providing for a measured return of forces to the United States and employment of rotational support.⁴⁰

EUCOM'S CONCEPT AND ITS APPLICABILITY TO OTHER COMBATANT COMMANDER'S AORS

EUCOM's plan has several positive aspects. First, the Theater Strategic Transformation Concept (TSTC) outlined above provides for the establishment of new facilities which would be moved forward, south and east, in EUCOM's AOR, thereby giving the Commander access to areas that can be expected to be of greater importance in future operations. Second, the TSTC would be more Spartan in scope. The expeditionary nature of this proposal would likely serve to keep the costs of the "new" facilities down, and the smaller U.S. presence would decrease the likelihood of conflict in those areas where there has been no significant presence to date. Third, the establishment of the forward locations would also allow for greater reductions of facilities in Western Europe. The cost savings of these reductions could be used at least in part to cover the expense of establishing the forward locations. Fourth, the TSTC allows for the preservation of the critical infrastructure that is already in place in Western Europe. The preservation of this infrastructure not only provides for the continued use of critical facilities, but can ensure that the existing system of agreements and arrangements in Western Europe can continue to function and that the policy

⁴⁰ Strategic Theater Transformation Concept, 24-30; MacRae, Catherine, "Jones to form Basing Decisions on Military Utility, Not Politics." InsideDefense.com, 1 May 2003. <http://www.insidedefense.com/secure/defense_docnum.asp?f=defense_2002.ask&docnum=PENTAGON-19-18-5> [26 April 2004], 1-2; Campbell, 2-3.

and interests of NATO allies remained connected with the United States. This preservation of the existing system is perhaps the greatest benefit of the EUCOM approach. Finally, the TSTC would provide a more flexible base of support for operations by other geographic commanders.

There is a negative aspect to the EUCOM plan. It is unclear whether the United States can successfully and in a timely fashion negotiate the agreements and arrangements that would be necessary for the operation of the facilities that would be established in the south and east of the EUCOM AOR. While the NATO or PfP Status of Forces Agreements (SOFA) are likely to be in place in almost all of the countries in Europe that might host future facilities, this is not true in Africa, and any agreement or arrangement in place, especially where there is only the NATO or PfP SOFA, would have to be supplemented as these agreements have throughout western Europe. In other words, while the creation of these facilities seems almost commonsensical⁴¹, it is unclear whether it can be legally and diplomatically executed.⁴²

Additionally it is unclear whether the EUCOM plan will satisfy whatever direction is provided by the Secretary of Defense. While the TSTC would seem to address the need for greater flexibility to meet the current security needs of the United States as a result of the forward placement of these new facilities in areas closer to future areas of operation, the TSTC does not seem to advocate making any changes to the current agreements and arrangements that are seen as unduly restricting U.S. operational requirements. In other words, the TSTC would not seem to advocate the renegotiation of existing agreements and

⁴¹ Campbell, 5.

⁴² Ibid.

arrangements to provide for greater flexibility, or to advocate the inclusion of such flexible language in any new agreements that would need to be negotiated to support the new facilities. As a result, the TSTC doesn't appear to provide for the freer hand that the Department may be seeking.

That said there is no indication that this type of freedom of action is even attainable in the current political climate, especially when it is remembered that such provisions were not included in the existing agreements and arrangements that the United States has, given that these agreements and arrangements were negotiated at a time when the United States had greater leverage. As a result, this omission may be meaningless in the light of what is achievable and the unlikelihood that host nations will cede such sovereignty as would be needed to provide the United States with a freer hand. The retention of key infrastructure in Europe in the form of JMOBs does appear consistent with the overall DoD policy in regard to existing facilities.⁴³

There is a question of whether the TSTC provides a model that can be used by the other geographic commanders. The geographic considerations of the respective overseas geographic commanders, as well as the political history of those areas, have dictated the differing development of their respective basing structure. While both EUCOM and the Pacific Command (PACOM) have significant facilities that resulted from World War II and the Cold War, the infrastructure in Europe tends to be densely distributed and land oriented consistent with the Army's predominance, while the infrastructure in the Pacific tends to be fewer in number and more widely distributed over a large area consistent with the Navy's

⁴³ Report Required by Section 2914 of the Defense Base Closure and Realignment Act of 1999, as Amended Through the National Defense Authorization Act for Fiscal Year 2003, 39.

predominance.⁴⁴ These are in contrast to Central Command (CENTCOM) and Southern Command (SOUTHCOM), where the infrastructure is relatively new and few. As a result of the geographic size of the PACOM AOR, and the limited existing infrastructure in the either the CENTCOM or SOUTHCOM AOR, it is doubtful that the EUCOM model can be made to fit these other AORs.

However, as noted above and in the context of the EUCOM plan, U.S. agreements and arrangements in place in Europe serve the purpose of supporting not just operations within the EUCOM AOR, but operations being conducted within either CENTCOM's or PACOM's AORs. Such a structure has not been needed within SOUTHCOM's AOR as a result of its proximity to the United States, though forward operating locations have been established recently in El Salvador, Ecuador and Netherlands Antilles to support counter-drug operations.

It is in EUCOM's AOR where the theater strategic environment has changed the greatest given the end of the Soviet Union, rather than in PACOM, where Korea remains a threat, or CENTCOM, where the current system of agreements and arrangements is more modern and thus more in line with the current operational requirements. As a result, it is likely that major changes in system of agreements and arrangements related to overseas basing is best pursued only in the EUCOM AOR at this time.

Finally, anticipating that any negotiations will take some time and have been traditionally led by teams originating from Washington, it will be important that some degree of continuity with this process be maintained by the Commander EUCOM. As a result, the

⁴⁴ Blacker, 93-94.

Combatant Commander will need to train and maintain qualified personnel from within his staff to participate in any negotiations in order to preserve his operational equities.⁴⁵

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⁴⁵ Erickson, 109-113; Druckman, Daniel, Three Cases of Base-Rights Negotiations: Lessons Learned, in U.S. Bases Overseas eds John W. McDonald, John W. and Diane B. Bendahmane. Boulder, CO: Westview Press, 1990, 193-194.

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